

## **REMARKS**

Claims 1-23 are pending and stand rejected, the rejections are respectfully traversed.

Initially, applicant notes with some disappointment that the rejection appears to be a moving target in this case. In the previous office action there was a detailed explanation why the references of record failed to disclose the features of claims 14 and 18. This is now contradicted in the present office action. Apart from the contradiction, the remaining parts of the office action are largely copied from the previous office action. In response to the previous arguments, the new office action only responds briefly to a few points on page 16, paragraph 10 of the office action. The few new points made by the examiner are made on page 16, paragraph 10. These will be addressed first.

The first point made by the examiner is that the examiner attempts to rebut the detailed arguments in Amendment A that pointed out that Hazenfield does not broadcast messages, but instead plays messages from previously distributed CD's. The only thing that is broadcast is a playlist which controls the playing of messages from a CD. The messages themselves are not broadcast. In response, the examiner points to column 5, and column 3. Column 5, lines 41-49 make clear that the only thing transmitted via the subcarrier radial paging company are "control signals comprising playlists". The portion of column 3 at lines 49-55 cited by the examiner does not discuss

the broadcast of messages. Instead it states there that the server 12 receives message playback data, including “sequences of selected messages (hereinafter referred to as playlists)” that are used “to command message playback devices 24 at selected remote sites to play selected messages.” Nothing in either of these passages states that the messages that are played by the playback devices are broadcast by the server 12. Instead, as was explained in detail before and is made clear in column 4 at line 41, “each message playback device 24 is preferably provided with a compact disk (CD) or disks 35 on which messages have been recorded.” There is also an alternative discussed, but it has nothing to do with broadcast over a wireless medium. The alternative is stated as “messages, however, can also be stored and distributed on other storage media such as an integrated circuit or a magnetic disk.” Hazenfield therefore makes clear that the messages themselves are not broadcast. What is broadcast is a playlist. The messages are on pre-recorded media and the pre-recorded media is used by the played back device 24.

If the examiner persists in stating that Hazenfield discloses the broadcast of messages, applicant requests that the specific text where Hazenfield discloses the broadcast of messages be cited and explained by the examiner. Each portion cited by the examiner has been carefully read. Hazenfield, in these portions, makes clear that it is playlists that are broadcast, and not messages including advertising content. The messages including advertising content are on pre-recorded media such as CD's. With these additional remarks, the rejection of claims 1, 7-8, 14-18, 21-22 under §103 is again

traversed. The additional remarks on pages 1-5 of Amendment A are incorporated herein.

Regarding claims 14 and 18, it is requested that the examiner explain the contradictory interpretations of Hazenfield in the present office action and the prior office action. As was discussed in the prior amendment, the examiner's interpretation regarding claims 14 and 18 was correct.

The remaining combinations and suppositions concerning Hazenfield and the other references must also fail. The fundamental flaw in interpreting Hazenfield is so great that the gap between the claimed invention and Hazenfield is greater than is recognized in any of the multitude of combinations that is used in the office action to reject various ones of the claims. None of the additional references, for example, discuss a message broadcast and the particular playing of messages in response to a playback operation.

Also, the combination of Hazenfield and Robbins is explicitly contrary to the teachings of Robbins. Robbins, as is stated in the abstract and summary contemplates "custom disks". The custom disks provide the DTMS signals that provide the control information for the playing of messages. This is completely unlike the method in claims such as claims 2 and 3. In Robbins it is a custom disk with a DTMS that induces for playing of a message. In contrast, Hazenfield sends a playlist over a broadcast. In the present invention, a playback operation is used to trigger message playing, *see, e.g.*,

claims 2 and 3.

Applicant now addresses particular additional remarks with respect to exemplary dependent claims. For purposes of appeal, all claims remain separately traversed whether or not they are discussed here or above. The remarks above and those in Amendment A sufficiently establish the lack of a prima facie case of obviousness with respect to any of the claims.

Regarding claim 2 (§103 Hazenfield/Robbins/Banyamin)<sup>1</sup>, the rejection motivation is nonsensical given the different purposes of the Hazenfield and Benyamin references. Hazenfield concerns a message delivery for telephone systems (see background). There is not a track end to recognize in Hazenfield and there is no potential interruption of listening to be contended with. Also, Benyamin is concerned with intelligent play list operations. There is no discussion of inserted messaging material between the tracks (playing a stored message). Yes, track ends are detected, but not for the purpose of messaging. Instead, tracks are added to play lists, for example. When a track ends, the same play list may continue or a new list may be used (see, FIG. 12). None of this has to do with messaging. The features of claim 2 are not taught or suggested.

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<sup>1</sup> Robbins is not cited in the rejection. However, Robbins is applied against claim 1. Technically, this is not a properly stated rejection. To address the arguments, it is assumed that the Examiner intended this particular combination.

Regarding claim 3 (§103 Hazenfield/Robbins/Banyamin), the state of the combination is that none of the references teach a message broadcast. Robbins uses CD players with custom discs. Hazenfield also uses pre-recorded media. Moreover, as Hazenfield relates to an “on hold” telephone messaging system, limiting the number of messages makes no sense. Message play will end when the hold time ends. The combination is therefore not supportable based upon the stated motivation.

Regarding claims 5-6 (Hazenfield/Robbins/Kuroda)<sup>2</sup>, Kuroda is cited for memory management techniques. Claim 5 does concern a memory management technique, but it does so for a device that receives a message broadcast. Modifying Hazenfield via Kuroda makes no sense because Hazenfield has messages stored on pre-recorded media. There is not a management issue with pre-recorded media, because new messages are not received on Hazenfield’s pre-recorded media. The motivation and the rejection are therefore unsupported.

Regarding claim 9, (§103 Hazenfield/Robbins/Banyamin), the Examiner concludes it would be obvious to modify Hazenfield to teach “erasing control code data . . .” under the conditions of claim 9. This contradicts Hazenfield’s teachings. Hazenfield uses pre-recorded media for a telephone on-hold system. If it were turned off, the media would not be erased. Also, the claim does not concern a user operation. The rejection states that Banyamin teaches that “a user can delete a play list”. There is no discussion of

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<sup>2</sup> Here again, the rejection is not properly stated as it cites only Hazenfield and Kuroda.

user deletion in claim 9. Instead, control information necessary for messaging is deleted under certain relevant conditions. The art and arguments of the Examiner have nothing to do with the claim.

Regarding claim 13 (§103 Hazenfield/Robbins/Banyamin), the remarks in the office action indicate a clear misreading of the claim. In the claim, a message is selected based upon a track title. This permits targeted advertising, for example, a user listening to a heavy metal track might hear a message targeted to such a demographic of user. The operations of play lists and music tracks in the office action indicate no appreciation of the features of this claim and do not address the actual claim features.

Regarding claim 14 (§103 Hazenfield/Robbins), the statement of the rejection also indicates a misinterpretation of the claim. The claim sets forth a promotion method using a distribution of portable digital audio media players. The portion of column 5 cited by the examiner relates to the content of a message that might be played as an advertisement of Hazenfield's on-hold telephone system. In claim 14, the promotion distributes media players (e.g., portable audio devices) (perhaps at a reduced cost or free) and then targets recipients with messaging. There is no discussion of such features in the office action and no discussion of such features in Hazenfield.

Regarding claim 18 (§103 Hazenfield/Robbins/Banyamin), the claim is again not interpreted properly. In the portion of column 4 cited by the examiner, telephone systems at various locations receive play back lists and play back their pre-

recorded media in the order indicated by the list. There is no discussion of distribution of players to target groups and broadcasting messages to such target groups by separate channels. The portion of the reference cited against this claim is simply puzzling.

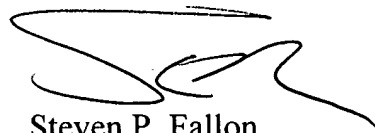
Regarding claim 21 (§103 Hazenfield/Robbins/Banyamin), the idea of loading does not make sense. In claim 21, messages are loaded. In Hazenfield and the applied art, playlists are loaded. The messages, if any exist, are pre-recorded on media. The rejection does not identify the transmission of any messages.

For all of the above reasons and for the reasons stated in Amendment A, applicant requests reconsideration and allowance of the application. If the examiner believes that an interview would expedite prosecution, the examiner is invited to contact the undersigned attorney at the below-listed number.

Respectfully submitted,

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